

09-3467
LOCALLY ASSESSED PROPERTY TAX
SIGNED 07-29-2010

BEFORE THE UTAH STATE TAX COMMISSION

PETITIONER

Petitioner,

v.

BOARD OF EQUALIZATION OF RICH
COUNTY, UTAH,

Respondent.

INITIAL HEARING ORDER

Appeal No. 09-3467

Parcel No. #####-1
 #####-2

Tax Type: Property Tax/Locally Assessed
Tax Year: 2009

Judge: Dixon Pignanelli

Presiding:

D'Arcy Dixon Pignanelli, Commissioner

Appearances:

For Petitioner: PETITIONER, Pro Se, by phone

For Respondent: RESPONDENT REP., Assessor, Rich County, by phone

STATEMENT OF THE CASE

Petitioner (the "Property Owner") is appealing the assessed value established for the subject properties for the lien date January 1, 2009 by the Rich County Board of Equalization (BOE). The County Assessor set the value of Parcel #####-2 (Parcel #####-2) at \$\$\$\$ and Parcel #####-1 (Parcel #####-1) at \$\$\$\$\$. The County BOE reduced the value of both parcels to \$\$\$\$.

Pursuant to Utah Code Annotated Sec. 59-1-502.5 an Initial Hearing was held on April 22, 2010 in the Commission Office in Salt Lake City with the Petitioner and Respondent participating by phone. The Property Owner requested the value of both parcels be lowered to \$\$\$\$\$. The representative for Respondent (the "County") requested the value set by the County BOE of \$\$\$\$ be sustained.

APPLICABLE LAW

All tangible taxable property shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law. (Utah Code Ann. Sec. 59-2-103 (1).)

“Fair market value” means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-1022(12).)

(1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board. . . . (4) In reviewing the county board’s decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if: (a) the issue of equalization of property values is raised; and (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties. (Utah Code Ann. Sec. 59-2-1006(1)&(4).)

To prevail in a real property tax dispute, the Petitioner must (1) demonstrate that the County's original assessment contained error, and (2) provide the Commission with a sound evidentiary basis for reducing the original valuation to the amount proposed by Petitioner. *Nelson v. Bd. of Equalization of Salt (X) County*, 943 P.2d 1354 (Utah 1997). See also Utah Code Sec. 59-1-1417 which provides, “In a proceeding before the commission, the burden of proof is on the petitioner . . .”

DISCUSSION

The subject properties are unimproved lots in CITY, Rich County, Utah. The subject properties are kitty-corner from each other in the SUBDIVISION 1, which is approximately one mile south of CITY proper along HIGHWAY that runs parallel to (X). Parcel #####-2 is 0.26 of an acre (11,326 sq. ft.) and located at ADDRESS 1 and parcel #####-1 is 0.23 of an acre (10,019 sq. ft.) and located at ADDRESS 2.

The Property Owner described the subject properties as generic lots because the subject properties are not on the (IDEAL SIDE) of the highway. Although the properties are within 150 yards of the (X), one must cross the highway to get to the (X). The Property Owner acknowledges the subject lots are view lots. (X) is visible from both subject lots, but the view

from Parcel #####-1 is partially obstructed by trees along the highway. Utilities are available, but only Parcel #####-2 has electricity stubbed to the property line. The subject lots are accessed by a private unimproved gravel road that ends at Lot #####-1. The Property Owner said SUBDIVISION 1 has less than (#) lots and only (#) are improved with structures—(#) were built approximately 30 years ago and (#) in the last year. The Property Owner provided five comparable sales of lots, and calculated an average selling price of \$\$\$\$\$ for the lots. Using the average selling price per square foot of his comparables (comps) would indicated a value of \$\$\$\$\$ for Parcel #####-2 and \$\$\$\$\$ for Parcel #####-1. The Property Owner said these calculations show the lots are not worth more than \$\$\$\$\$, which is the value requested for both lots.

The Assessor provided appraisals for both subject properties. The appraisals state the subjects have good views with sloping topography and give a statement of value as of the lien date January 1, 2009 of \$\$\$\$\$ for both. The Assessor stated land in the area is selling as a lot value, not a square foot value. She also said that with large, multiple acreage lots the Assessor's Office can establish a trend, but with smaller lots (an acre or less) it is more difficult to establish a trend. She said in the AREA further north of the subject properties, 0.11 and 0.15 acre lots have sold for \$\$\$\$\$ and a one-acre lot in SUBDIVISION 2 has also sold for \$\$\$\$\$. The Assessor stated that at the BOE hearings the BOE looked at prior and post lien date sales and adjusted all the lots in the SUBDIVISION 1 to \$\$\$\$\$. It was her opinion that the one post lien date sale she provided showed that after the lien date there was not a pattern of values dropping.

The Property Owner's and Assessor's sales comparables are summarized below.

Address	lot size/sq ft List date	list \$ amount sale date Price/sq ft	sale \$ amount	other
Property Owner's Comp 1 ADDRESS 3	0.34 acres 14,810 sf	\$\$\$\$\$ 5/20/2008	\$\$\$\$\$ 9/22/2008 \$\$\$\$\$/sf	
Assessor's Comp 1	15,000 sf		\$\$\$\$\$ / sf	One mile from subject properties. Good view, sloping
Property Owner's Comp 2 ADDRESS 4	0.33 acres 14375 sf	\$\$\$\$\$ 9/11/2007	\$\$\$\$\$ 11/21/2008 \$\$\$\$\$ /sf	Approx. 3 miles further south in SUBDIVISION 2. TP felt more valuable views
Property Owners Comp 3 ADDRESS 5	0.62 acres 27,007 sf	\$\$\$\$\$ 10/17/2008	\$\$\$\$\$ 12/5/2008 \$\$\$\$\$	Approx. 3 miles north towards CITY in the foothills by CANYON.
Tax payer's Comp 4 ADDRESS 6	0.35 acres 15,246 sf	\$\$\$\$\$ 4/10/2008	\$\$\$\$\$ 12/15/2008 \$\$\$\$\$/ sf	
Assessor's Comp 2	15,099 sft		\$\$\$\$\$	One mile from subject properties. Good view,

				sloping
Property Owner's Comp 5 ADDRESS 7	0.54 acres 23,522 sf	\$\$\$\$ 9/8/2008	\$\$\$\$ 3/31/2009 \$\$\$\$ / sf	Approx. 3 miles south in SUBDIVISION 2. TP felt more valuable views
Assessor's Comp 3 ADDRESS 8	0.28 acres 12,005 aft		\$\$\$\$ 7/17/09 \$\$\$\$ / sf	One mile from the subject properties. Good view, sloping.

To support a reduction in value the Property Owner took the number of square feet of each comparable sale and divided it by the sales price coming up with a sales price per square foot. He then computed an average sales price per square foot then multiplied that average price per square foot by the number of square feet in the subject lots to arrive at what he termed an "adjusted value". While the Tax Commission acknowledges the Property Owner has provided a method to value a lot, it does not take into account differences between lots, which may account for differences in sales prices. In addition a larger lot selling for around the same price as a smaller lot would have a reduced price per square foot. For example the Property Owner had lot sizes 0.33, 0.34, and 0.35 that sold for prices of \$\$\$\$\$, \$\$\$\$\$, and \$\$\$\$\$ per square foot respectively; however lot sizes of 0.62 and 0.54 sold for less per square foot at \$\$\$\$\$ and \$\$\$\$\$ respectively. The Property Owner's information shows smaller lots sold for as much if not more than larger lots indicating that a larger lot is not necessarily desirable and that lots do sell for a lot value not a square foot value. This would support the Assessor's position that it is the lot itself, not necessarily the square footage of the lot that determines the lot value. The Commission notes the Property Owner did not ask for a value based on this method, but appears to only use the method to demonstrate the BOE value is too high and to support requesting a value less than the BOE value.

There was discussion on whether lots in the SUBDIVISION 3 would be more valuable because SUBDIVISION 3 is a newer and larger subdivision with (#) to (#) lots and newer homes. Comp One used by both the Property Owner and Assessor are in SUBDIVISION 3. The Property Owner also held lots in the SUBDIVISION 2 development would have superior views and thus would sell for more. There was also discussion on whether the road in the SUBDIVISION 1 would be extended facilitating more phases.

In seeking a value lower than that established by the County BOE the Property Owner has the burden of proof and must demonstrate not only an error in the valuation set by the County BOE, but must also provide an evidentiary basis to support a new value. The value set by the County BOE at the BOE hearing has the presumption of correctness at a Tax Commission Hearing. The Property Owner stated he looked at a six-month band to use for comparables and provided five comparable sales ranging from \$\$\$\$\$ to \$\$\$\$\$; four of the comparables fall within

the three and half (3 ½) months prior to the lien date. The Commission holds the Property Owner has provided enough information to call into question the value of \$\$\$\$ set for the subject properties by the BOE. The Commission now considers the totality of the evidence.

Both the Property Owner and Assessor provided comparables after the lien date with no time adjustments back to the lien date. The Tax Commission generally does not use post lien date sales except to corroborate a value or establish a trend. The Commission prefers comparable sales prior to the lien date as it is a better indication of the market and therefore “the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (Utah Code Ann. 59-2-1022(12).) The post lien date sale provided by the Property Owner and Assessor are four months and more after the lien date and are too different in value to establish a trend.

The Property Owner and the Assessor both used two of the same comparables; these are Property Owners’ Comp One, which sold DATE for \$\$\$\$ and Property Owners’ Comp Four, which sold DATE for \$. The Property Owner provided two other comparables: Comp Two that sold DATE for \$\$\$\$ and Comp Three that sold DATE for \$. When looking at these four comparables together and their list date, list price, sales date and sales price, the data would suggest prices were falling between MONTH A 2009 and MONTH B 2009. All these sales fell within three months of the lien date, but the ranges of sales—\$\$\$ (both used), \$\$\$\$ (property owner), \$\$\$\$ (both used) and \$\$\$\$ (property owner)--would seem to question if the BOE adjusted values to the higher end of the market by adjusting values to \$. Looking at Comps One, Three and Four the value of sales between MONTH C and MONTH D 2008 could have been dropping anywhere from 3% to 4 % a month and the two sales closest to the lien date, Comp Three on DATE for \$\$\$\$ and Comp Four on DATE for \$\$\$\$\$, support a value lower than the \$\$\$\$ set by the BOE.

Reviewing the evidence presented, the Property Owner’s comparables are sufficient to demonstrate error in the value determined by the BOE and provide an evidentiary basis to support a lower value.

DECISION AND ORDER

Based upon the foregoing, the Tax Commission finds for the January 1, 2009 lien date the value of Parcel No. #####-1 is \$\$\$\$ and the value of Parcel No. #####-2 is \$. The County Auditor is hereby ordered to adjust its records in accordance with this decision. It is so ordered.

This Decision does not limit a party's right to a Formal Hearing. Any party to this case may file a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request must include the Petitioner's name, address, and appeal number and be mailed to the address listed below:

Appeals Division
Office of the Commission
Utah State Tax Commission
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this ____ day of _____, 2010.

R. Bruce Johnson
Commission Chair

Marc B. Johnson
Commissioner

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

DDP/ddp 09-3467.int